

NTSB Order No. EA-5172

Issued under delegated authority (49 C.F.R. 800.24)
on the 29th day of July, 2005

Respondent.

ORDER DISMISSING APPEAL

¹ Section 91.13(a) prohibits careless or reckless operation of an aircraft so as to endanger the life or property of another. In his decision, the law judge found that respondent, who was the pilot-in-command of an A320 airplane being operated on a passenger-carrying commercial flight, landed with the parking brake on.

counsel if he would like those appeal rights to be read into the record. One of respondent's counsel responded, "No. I think we'll waive that, your honor, and we'll talk with him and make sure he understands his appellate rights." (Transcript (Tr.) at 255.) It should be noted that respondent was represented by three attorneys at the hearing, one of whom is a senior attorney with the Air Line Pilots Association and a long-time practitioner in NTSB proceedings, and, therefore, is familiar with our rules.

The Board's Rules of Practice (49 CFR Part 821) require that an appeal from a decision of a law judge be filed within 10 days after the date on which the oral initial decision was rendered.² The time for filing a notice of appeal from the law judge's decision in this case expired on May 31, 2005.³ Therefore, respondent's notice was filed 14 days late. Without good cause to excuse a failure to file a timely notice of appeal, or a timely request to file one out of time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

Respondent, who is no longer represented by counsel, argues that his late appeal should be accepted because: (1) two other NTSB law judges (Judge Mullins and Judge Geraghty) allegedly told one of respondent's former attorneys during a discussion at the NTSB Bar Association meeting on June 8 and 9, 2005, that Judge Pope's decision was "an advisory opinion"; and (2) there is "confusion" over whether he was properly advised of the deadline for filing a notice of appeal. Neither of respondent's assertions constitutes good cause for his failure to file a timely appeal.

Respondent provides no documentation or substantiation for the alleged statement by Judges Mullins and Geraghty that the oral initial decision in this case should be viewed as merely advisory. Moreover, any such statement would be obviously incorrect and patently inconsistent with our rules. In his oral

² Section 821.47 provides, in part, as follows:

§ 821.47 Notice of Appeal.

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served.

³ May 29th was a Sunday, and the following day was a legal holiday (Memorial Day). Therefore, respondent's notice of appeal was due on May 31, 2005.

initial decision Judge Pope discussed the evidence, affirmed the alleged violation, gave the parties written copies of their appeal rights, confirmed on the record that the attorneys for both parties had nothing further to raise before him, and then stated, "very well then the hearing is closed." (Tr. at 257.) Respondent's contention that Judge Pope's decision was merely advisory is completely unsupported.

Respondent's suggestion that he was not properly informed of the filing deadline for a notice of appeal is also unavailing. Not only did the law judge hand respondent's counsel a written copy of his appeal rights, presumably in respondent's presence, but the Board's procedural rules are publicly available and copies of those rules were sent to respondent's counsel of record when he filed his initial appeal to the Board. If his attorneys did not pass on this information or otherwise failed in their duty to respondent, his recourse is against the attorneys, not the Board. See Administrator v. Richard, et. al., 5 NTSB 2198, 2201 (1987) (decision by respondents' counsel to leave during the evidentiary portion of the hearing is a matter between him and his clients and whatever problems respondents had as a result are not attributable to any reversible error by the law judge).

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's notice of appeal is dismissed.

Ronald S. Battocchi
General Counsel